

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

**BEFORE SHRI.NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A No.5632/Mum/2024
(Assessment Year: 2017-18)**

Air India Limited Block-4, Vatika One On One, Sector-16, NH-48, Industrial Estate, Gurgaon-122 007 PAN : AACCN6194P	vs	Assistant Commissioner of Income Tax, Circle 5(1)(1), Mumbai RoomNo.568, 5 th Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai-400 020
APPLICANT		RESPONDENT

Assessee by : Shri Madhur Agarwal
Respondent by : Shri Ram Krishn Kedia (SR DR)

Date of hearing : 12/12/2024
Date of pronouncement : 18/12/2024

ORDER

PER ANIKESH BANERJEE, JM:

Instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre, Delhi (NFAC) (for brevity, 'Ld.CIT(A)') passed under section 250 of the Income-tax Act, 1961 (for brevity, 'the Act') for Assessment year 2017-18, date of order 05/09/2024. The impugned order was emanated from the order of the Learned Assistant Commissioner of Income-tax, Circle

5(1)(1), Mumbai (for brevity the "Ld. AO") order passed under section 143(3) of the Act, date of order 12/12/2019.

2. The assessee has taken the following grounds:-

"1.1. On the facts and in circumstances of the case and in law, the Learned National Faceless Appeals Centre ("Ld. NFAC) vide order dated September 5, 2024 under section 250 of the Income-tax Act, 1961 ("the Act") erred in confirming the disallowance under section 14A of the Act amounting to Rs. 5,84,43,732 made by the Learned Asst. Commissioner of Income tax 5(1)(1), Mumbai ("Ld. AO") vide order dated December 12, 2019 under section 143(3) of the Act.

1.2. The Appellant prays that the Ld. AO be directed to delete the addition made under section 14A of the Act amounting to Rs. 5,84,43,732/-,

2.1. Without prejudice to the above, the Ld. NFAC erred in not appreciating that no disallowance under Rule 8D(i) of the Income-tax Rules, 1962 ("the Rules") is not applicable in the facts of the Appellant's case and the Ld. AO has erred in disallowing Rs. 10,81,48,809 as a direct expenditure under Rule 8D(i) of the Rules without providing any basis/reasoning for making such a disallowance.

2.2. The Appellant prays that the Ld. AO be directed to delete the disallowance made under Rule 8D(i) of the Rules amounting to Rs. 10,81,48,809.

3.1. Without prejudice to the above, the Appellant prays that the Ld. AO be directed to restrict to the disallowance under Rule 8D(ii) of the Rules to Rs. 66,11,815/-being an amount equal to one per cent of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total.

3.2. The Appellant prays that the Ld. AO be directed to restrict the disallowance under section 14A of the Act to Rs. 66,11,815.

The Appellant craves leave to amend, alter, modify and add any further grounds of appeal, if required."

2. The brief facts of the case are that the assessee, a Government of India undertaking, during the impugned assessment year and incorporated in India. The assessee is engaged in the business of providing domestic and international air transport services, which includes mainly the passenger and cargo services and other related services. During the impugned assessment year, the assessee earned dividend amount to Rs.7,52,32,425/- from the following Indian companies and foreign companies: -

Air India SATs	Rs.3,03,18,732
Cochin International Airport Limited	Rs.2,81,25,000
Dividend from investment in foreign companies	<u>Rs.1,67,88,694</u>
Total	<u>Rs.7,52,32,426</u>

The dividend from investment in foreign companies directly taxed under the head "Income from other sources". The balance dividend amount to Rs.3,03,18,732/- and Rs.2,81,25,000/- which works out to total amount of Rs.5,84,43,732/- is charged to tax under section 14A read with rule 8D (2) of the Income-tax Rules, 1962 (for brevity "the Rule"). During this year, the assessee holding investments worth Rs.1,67,17,70,000/- as at the end of the year under scrutiny. The Ld.AO had made disallowance of expenditure in relation to income which does not or shall not form part of the total income as required under section 14A read with provisions of Rule 8D amount to Rs.5,84,43,732/-. The aggrieved assessee filed an appeal before the Ld. CIT(A). The Ld.CIT(A) upheld the view of the assessing authority. Being aggrieved on the appeal order, the assessee filed appeal before us.

3. The assessee challenged the addition on the ground that the application of Rule 8D of the Rule was wrongly implemented by the assessing authority which was confirmed by the Ld.CIT(A). It is noted that Rule 8D(2) of the Rule was amended with effect from 09th June, 2016 under the Income-tax (Fourteenth Amendment) Rule, 2016. The expenditure in relation to income which does not form part of the total income was calculated by the Ld.AO as per the earlier provisions i.e. prior amendment. The new provisions will be applicable in assessee's case.

4. For calculation of annual average of the opening and closing balances of the value of investment, the investments are calculated in this way: -

Sr.No.	Particulars	Amount of investment (INR)	
		As on March 31, 2016	As on March 31, 2017
1	Investment in Air India SATS Airport Services Private Limited ("AI SATS") (as joint venture of the Company with Singapore Airport Terminal Services)	43,61,81,530	43,61,81,530
2	Cochin International Airport Limited ("CIAL")	22,50,00,000	22,50,00,000
	Total	66,11,81,530	66,11,81,530

In argument it is placed that the Ld.AO had calculated in different mode of calculation, which is as below:-

"5.5 In view of the above, disallowance u/s 14A read with Rule BD ought to be made in this case. The constitutional validity of Rule 8D has been upheld by the Hon'ble Bombay High Court in the case of Godrej Boyce & Mfg. Co. Ltd. (234 CTR 1) wherein, it has been observed by the Hon'ble High Court that once the satisfaction is accorded by the assessing officer for making a disallowance u/s 14A then the procedure for computing disallowance is to be followed as per Rule

8D. Accordingly, in this case the disallowance u/s 14A read with Rule 8D is worked as under:

Working of disallowance u/s 14A as per Rule 8D (2):

i	The amount of expenditure directly relating to income which does not form part of total income (As considered in earlier years)	10,81,48,809
ii	An amount equal to one percent of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income. (As per the details submitted by the assessee.)	1,38,67,167
	Total Disallowance	12,20,15,976

6. During the arguments, the Learned Departmental Representative (Ld. DR) submitted that the assessee incurred expenses of Rs. 12,20,15,976/- during the impugned assessment year. These expenses, according to the Ld. DR, pertain to income that does not form part of the total taxable income. Therefore, the disallowance under Section 14A of the Act was calculated and restricted to Rs. 5,84,43,732/-, which corresponds to the dividend income earned in the relevant year. The Ld. DR placed full reliance on the orders of the revenue authorities.

7. After hearing both parties and reviewing the documents on record, we find that the key issue in this appeal concerns the applicability of Section 14A read with Rule 8D post the 2016 amendment. The assessee's grievance is that the Ld. AO applied the provisions as they existed prior to the 2016 amendment.

When calculating disallowance under Section 14A, only those investments that yield exempt income are to be considered. Specifically, investments in "Air India SATS" and "CIAL" were found to yield dividend income. Based on this, 1% of the average annual investment amounting to Rs. 66,11,81,530/- has been computed

as Rs. 66,11,815/-. Both parties have agreed to this addition under Section 14A read with Rule 8D.

We further note that a similar view was upheld by the Delhi ITAT Bench-I in the case of **Bharatiya International Limited vs. DCIT [(2024) 158 taxmann.com 239]**.

The relevant portion of paragraph 11.2 from that judgment states:

“11.2 In the light of the submissions made on behalf of the assessee, no further disallowance under section 14A is called for in the light of the judgment rendered in the case of Jt. Investments (P) Ltd. v. CIT [2015] 59 taxmann.com 295/233 Taxman 117/372 ITR 694 (Delhi) and Pr. CIT v. Caraf Builders & Constructions (P) Ltd. [2019] 101 taxmann.com 167/261 Taxman 47/414 ITR 122 (Delhi) (SLP dismissed by SC). It is well settled law that disallowance under section 14A can be made only in respect of those investments which have yielded tax free income during the year as held in Caraf Builders (supra) and ACB India Ltd. v. Asstt. CIT [2015] 62 taxmann.com 71/235 Taxman 22/374 ITR 108 (Delhi). The AO is thus directed to delete the disallowance under section 14A made over and above the disallowance offered by the assessee.”

8. In our view, Ld. CIT(A) erred in accepting calculations based on the pre-amended provisions. Post-amendment, only investments that yield dividend income are to be considered for disallowance. Relying on the decision of **Bharatiya International Limited** (supra), the addition is now restricted to Rs. 66,11,815/- under Section 14A of the Act.

The Ld. DR could not provide any contrary judgment to rebut the submissions of the Ld. AR. Accordingly, we set aside the impugned appeal order and modify the assessment order as directed above.

9. In the result, the appeal of the assessee bearing **ITA No. 5632/Mum/2024** is partly allowed.

Order pronounced in the open court on 18th day of December, 2024.

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 18/12/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai